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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,121	03/17/2004	Morton Beroza	0082.04	5292

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EXAMINER

PARSLEY, DAVID J

ART UNIT PAPER NUMBER

3643

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/803,121	Applicant(s) BEROZA, MORTON	
	Examiner David J Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-17-04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **Detailed Action**

#### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
it is not signed or dated by applicant.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each of claims 1, 3 and 5 the limitation "...said wick is adjustable in order to achieve maximum attraction of said at least one liquid attractant..." as seen in lines 6-7 of claim 1, lines 6-7 of claim 3 and lines 7-9 of claim 5, is indefinite in that as seen in applicant's disclosure the wick is to absorb the attractant so that the attractant can be emitted

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from the device and the wick is not used to attract the liquid attractant but is instead to aid in attracting the insects to the device.

Claims 2 and 4 depend from rejected claims 1 or 3 and include the limitations of claims 1 or 3 thereby rendering these dependent claims indefinite.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,254,948 to Kubalek or U.S. Patent No. 4,908,977 to Foster.

Referring to claims 1-5, Kubalek and Foster disclose a device/method for providing uniform emission of a flying insect attractant comprising, a container – at 14,16 of Kubalek and – at 1-3 of Foster, comprising a composition having at least one liquid attractant for attracting flying insects – see for example page 1 column 2 lines 26-33 of Kubalek and column 2 lines 1-68 of Foster, a wick – at 11 of Kubalek and – at 4 of Foster, inserted into the container wherein the wick is adjustable in order to achieve maximum attraction of the at least one liquid attractant – see for example figures 1-5 of Kubalek and figures 1-2 of Foster, and an opening – at 19 or 20 of Kubalek and – at 5 of Foster, in the container to allow air to enter the device as the at least one liquid attractant is absorbed in the wick – see for example figures 1-5 of Kubalek and figures 1-2

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of Foster, at least one volatile insecticide is in the container and is absorbed by the wick – see for example page 1 column 2 lines 22-25 of Kubalek and column 2 lines 1-68 of Foster, and hanging the at least one trap in a location suspected of being infested by at least one of a targeted pest flying insect – see for example – at 21 or 38 or 39 in figures 1-5 of Kubalek and claim 20 in column 8 of Foster.

### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to insect attracting devices in general:

U.S. Pat. No. 1,056,535 to Grimes et al. – shows insect trap with wick

U.S. Pat. No. 2,176,345 to Hurwitt – shows insect trap with wick

U.S. Pat. No. 5,749,168 to Chrysanthis – shows insect trap with wick

U.S. Pat. No. 6,553,712 to Majerowski et al. – shows insect trap with wick

EP Pat. No. 420144 – shows insect trap with wick


JP Pat. No. 4-200336 – shows container with wick and liquid

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David Parsley  
Patent Examiner  
Art Unit 3643

  
**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

10/27/04